

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 941

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

An act to amend ~~Section 51 of the Civil Code, relating to civil rights~~
Sections 8616.5, 8814.5, and 9007 of the Family Code, relating to
adoption.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Committee on Judiciary. ~~Civil rights-Adoption.~~

Existing law allows for continuing contact between the birth relatives and the child if an agreement is entered into voluntarily and in the best interests of the child at the time the adoption petition is granted. Existing law limits postadoption contact to the sharing of information about the child, unless the child had an existing relationship with the birth relative.

This bill would permit contact between the child and birth relatives, including visitation and sharing of information, where there was not an existing relationship, as specified.

Existing law provides that, after a consent to an adoption is signed by the birth parent or parents, the birth parent or parents signing the consent have 30 days to take one of specified actions, including signing a waiver of the right to revoke consent. Existing law requires a waiver to be signed in the presence of a representative of the department or the delegated county adoption agency, or if the birth parents are represented by independent legal counsel, the waiver can also be signed in the presence of a judicial officer of the court of record or an adoption service provider. Existing law allows for the witnessing and signing of

a waiver of the right to revoke consent by a birth parent living outside of California to be conducted in the state where the birth parent is located, as provided.

This bill would allow for the adoption service provider who advised the birth mother and witnessed the signing of the consent to be the adoption service provider present for the signing of a waiver, if the birth parents are represented by independent legal counsel. This bill would make these provisions applicable to waivers signed in California.

Existing law requires that in a stepparent adoption the prospective adoptive parent and the child proposed to be adopted shall appear before the court, as specified.

This bill would provide that if it is impossible or impracticable for either prospective adoptive parent to make an appearance in person, and the circumstances are established by clear and convincing documentary evidence, the court may, in its discretion, waive the personal appearance of the prospective adoptive parent and the appearance may be made for the prospective adoptive parent by counsel, commissioned and empowered in writing for that purpose, as specified.

~~The Unruh Civil Rights Act provides that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.~~

~~This bill would instead provide that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, and services in all business establishments of every kind whatsoever.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 8616.5 of the Family Code is amended*
- 2 *to read:*
- 3 8616.5. (a) The Legislature finds and declares that some
- 4 adoptive children may benefit from either direct or indirect contact
- 5 with birth relatives, including the birth parent or parents or an

1 Indian tribe, after being adopted. Postadoption contact agreements
2 are intended to ensure children of an achievable level of continuing
3 contact when contact is beneficial to the children and the
4 agreements are voluntarily entered into by birth relatives, including
5 the birth parent or parents or an Indian tribe, and adoptive parents.
6 Nothing in this section requires all of the listed parties to participate
7 in the development of a postadoption contact agreement in order
8 for the agreement to be entered into.

9 (b) (1) Nothing in the adoption laws of this state shall be
10 construed to prevent the adopting parent or parents, the birth
11 relatives, including the birth parent or parents or an Indian tribe,
12 and the child from voluntarily entering into a written agreement
13 to permit continuing contact between the birth relatives, including
14 the birth parent or parents or an Indian tribe, and the child if the
15 agreement is found by the court to have been entered into
16 voluntarily and to be in the best interests of the child at the time
17 the adoption petition is granted.

18 ~~(2) Except as provided in paragraph (3), the~~ The terms of any
19 postadoption contact agreement executed under this section shall
20 be limited to, but need not include, all of the following:

21 (A) Provisions for visitation between the child and a birth parent
22 or parents and other birth relatives, including siblings, and the
23 child's Indian tribe if the case is governed by the Indian Child
24 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

25 (B) Provisions for future contact between a birth parent or
26 parents or other birth relatives, including siblings, or both, and the
27 child or an adoptive parent, or both, and in cases governed by the
28 Indian Child Welfare Act, the child's Indian tribe.

29 (C) Provisions for the sharing of information about the child in
30 the future.

31 ~~(3) The terms of any postadoption contact agreement shall be~~
32 ~~limited to the sharing of information about the child, unless the~~
33 ~~child has an existing relationship with the birth relative.~~

34 (c) At the time an adoption decree is entered pursuant to a
35 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
36 9000, the court entering the decree may grant postadoption
37 privileges if an agreement for those privileges has been entered
38 into, including agreements entered into pursuant to subdivision (f)
39 of Section 8620. The hearing to grant the adoption petition and
40 issue an order of adoption may be continued as necessary to permit

1 parties who are in the process of negotiating a postadoption
2 agreement to reach a final agreement.

3 (d) The child who is the subject of the adoption petition shall
4 be considered a party to the postadoption contact agreement. The
5 written consent to the terms and conditions of the postadoption
6 contact agreement and any subsequent modifications of the
7 agreement by a child who is 12 years of age or older is a necessary
8 condition to the granting of privileges regarding visitation, contact,
9 or sharing of information about the child, unless the court finds
10 by a preponderance of the evidence that the agreement, as written,
11 is in the best interests of the child. Any child who has been found
12 to come within Section 300 of the Welfare and Institutions Code
13 or who is the subject of a petition for jurisdiction of the juvenile
14 court under Section 300 of the Welfare and Institutions Code shall
15 be represented by an attorney for purposes of consent to the
16 postadoption contact agreement.

17 (e) A postadoption contact agreement shall contain the following
18 warnings in bold type:

19 (1) After the adoption petition has been granted by the court,
20 the adoption cannot be set aside due to the failure of an adopting
21 parent, a birth parent, a birth relative, an Indian tribe, or the child
22 to follow the terms of this agreement or a later change to this
23 agreement.

24 (2) A disagreement between the parties or litigation brought to
25 enforce or modify the agreement shall not affect the validity of
26 the adoption and shall not serve as a basis for orders affecting the
27 custody of the child.

28 (3) A court will not act on a petition to change or enforce this
29 agreement unless the petitioner has participated, or attempted to
30 participate, in good faith in mediation or other appropriate dispute
31 resolution proceedings to resolve the dispute.

32 (f) Upon the granting of the adoption petition and the issuing
33 of the order of adoption of a child who is a dependent of the
34 juvenile court, juvenile court dependency jurisdiction shall be
35 terminated. Enforcement of the postadoption contact agreement
36 shall be under the continuing jurisdiction of the court granting the
37 petition of adoption. The court may not order compliance with the
38 agreement absent a finding that the party seeking the enforcement
39 participated, or attempted to participate, in good faith in mediation
40 or other appropriate dispute resolution proceedings regarding the

1 conflict, prior to the filing of the enforcement action, and that the
2 enforcement is in the best interests of the child. Documentary
3 evidence or offers of proof may serve as the basis for the court's
4 decision regarding enforcement. No testimony or evidentiary
5 hearing shall be required. The court shall not order further
6 investigation or evaluation by any public or private agency or
7 individual absent a finding by clear and convincing evidence that
8 the best interests of the child may be protected or advanced only
9 by that inquiry and that the inquiry will not disturb the stability of
10 the child's home to the detriment of the child.

11 (g) The court may not award monetary damages as a result of
12 the filing of the civil action pursuant to subdivision (e) of this
13 section.

14 (h) A postadoption contact agreement may be modified or
15 terminated only if either of the following occurs:

16 (1) All parties, including the child if the child is 12 years of age
17 or older at the time of the requested termination or modification,
18 have signed a modified postadoption contact agreement and the
19 agreement is filed with the court that granted the petition of
20 adoption.

21 (2) The court finds all of the following:

22 (A) The termination or modification is necessary to serve the
23 best interests of the child.

24 (B) There has been a substantial change of circumstances since
25 the original agreement was executed and approved by the court.

26 (C) The party seeking the termination or modification has
27 participated, or attempted to participate, in good faith in mediation
28 or other appropriate dispute resolution proceedings prior to seeking
29 court approval of the proposed termination or modification.

30 Documentary evidence or offers of proof may serve as the basis
31 for the court's decision. No testimony or evidentiary hearing shall
32 be required. The court shall not order further investigation or
33 evaluation by any public or private agency or individual absent a
34 finding by clear and convincing evidence that the best interests of
35 the child may be protected or advanced only by that inquiry and
36 that the inquiry will not disturb the stability of the child's home
37 to the detriment of the child.

38 (i) All costs and fees of mediation or other appropriate dispute
39 resolution proceedings shall be borne by each party, excluding the
40 child. All costs and fees of litigation shall be borne by the party

1 filing the action to modify or enforce the agreement when no party
2 has been found by the court as failing to comply with an existing
3 postadoption contact agreement. Otherwise, a party, other than the
4 child, found by the court as failing to comply without good cause
5 with an existing agreement shall bear all the costs and fees of
6 litigation.

7 (j) The Judicial Council shall adopt rules of court and forms for
8 motions to enforce, terminate, or modify postadoption contact
9 agreements.

10 (k) The court may not set aside a decree of adoption, rescind a
11 relinquishment, or modify an order to terminate parental rights or
12 any other prior court order because of the failure of a birth parent,
13 adoptive parent, birth relative, an Indian tribe, or the child to
14 comply with any or all of the original terms of, or subsequent
15 modifications to, the postadoption contact agreement, except as
16 follows:

17 (1) Prior to issuing the order of adoption, in an adoption
18 involving an Indian child, the court may, upon a petition of the
19 birth parent, birth relative, or an Indian tribe, order the parties to
20 engage in family mediation services for the purpose of reaching a
21 postadoption contact agreement if the prospective adoptive parent
22 fails to negotiate in good faith to enter into a postadoption contact
23 agreement, after having agreed to enter into negotiations, provided
24 that the failure of the parties to reach an agreement is not in and
25 of itself proof of bad faith.

26 (2) Prior to issuing the order of adoption, if the parties fail to
27 negotiate in good faith to enter into a postadoption contact
28 agreement during the negotiations entered into pursuant to and in
29 accordance with paragraph (1), the court may modify prior orders
30 or issue new orders as necessary to ensure the best interest of the
31 Indian child is met, including, but not limited to, requiring parties
32 to engage in further family mediation services for the purpose of
33 reaching a postadoption contact agreement, initiating guardianship
34 proceeding in lieu of adoption, or authorizing a change of adoptive
35 placement for the child.

36 *SEC. 2. Section 8814.5 of the Family Code is amended to read:*

37 8814.5. (a) After a consent to the adoption is signed by the
38 birth parent or parents pursuant to Section 8801.3 or 8814, the
39 birth parent or parents signing the consent shall have 30 days to
40 take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, in cases where the birth parent or parents have not regained custody, or the birth parent or parents have failed to make efforts to exercise their rights under subdivision (b) of Section 8815, a written notarized statement reinstating the original consent may be signed and delivered to the department or delegated county adoption agency, in which case the revocation of consent shall be void and the remainder of the original 30-day period shall commence. After revoking consent, in cases in which the birth parent or parents have regained custody or made efforts to exercise their rights under subdivision (b) of Section 8815 by requesting the return of the child, upon the delivery of a written notarized statement reinstating the original consent to the department or delegated county adoption agency, the revocation of consent shall be void and a new 30-day period shall commence. The birth mother shall be informed of the operational timelines associated with this section at the time of signing of the statement reinstating the original consent.

(2) (A) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of any of the following:

(i) A representative of the department or delegated county adoption agency.

(ii) A judicial officer of a court of record if the birth parent is represented by independent legal counsel.

(iii) An adoption service provider, *including, but not limited to, the adoption service provider who advised the birth mother and witnessed the signing of the consent*, if the birth parent or parents are represented by independent legal counsel. The adoption service provider shall ensure that the waiver is delivered to the department, the petitioners, or their counsel no earlier than the end of the business day following the signing of the waiver. The adoption service provider shall inform the birth parent that during this time period he or she may request that the waiver be withdrawn and that, if he or she makes that request, the waiver shall be withdrawn.

(B) An adoption service provider may assist the birth parent or parents in any activity where the primary purpose of that activity is to facilitate the signing of the waiver with the department, a

1 delegated county agency, or a judicial officer. The adoption service
2 provider or another person designated by the birth parent or parents
3 may also be present at any interview conducted pursuant to this
4 section to provide support to the birth parent or parents, except
5 when the interview is conducted by independent legal counsel for
6 the birth parent or parents.

7 (C) The waiver of the right to revoke consent may not be signed
8 until an interview has been completed by the department or
9 delegated county adoption agency unless the waiver of the right
10 to revoke consent is signed in the presence of a judicial officer of
11 a court of record or an adoption service provider as specified in
12 this section. If the waiver is signed in the presence of a judicial
13 officer, the interview and the witnessing of the signing of the
14 waiver shall be conducted by the judicial officer. If the waiver is
15 signed in the presence of an adoption service provider, the
16 interview shall be conducted by the independent legal counsel for
17 the birth parent or parents. If the waiver is signed in the presence
18 of an adoption service provider, the waiver shall be reviewed by
19 the independent legal counsel who (i) counsels the birth parent or
20 parents about the nature of his or her intended waiver and (ii) signs
21 and delivers to the birth parent or parents and the department a
22 certificate in substantially the following form:

23 I, (name of attorney), have counseled my client, (name of
24 client), on the nature and legal effect of the waiver of right to
25 revoke consent to adoption. I am so disassociated from the
26 interest of the petitioner(s)/prospective adoptive parent(s) as
27 to be in a position to advise my client impartially and
28 confidentially as to the consequences of the waiver. (Name of
29 client) is aware that California law provides for a 30-day period
30 during which a birth parent may revoke consent to adoption.
31 On the basis of this counsel, I conclude that it is the intent of
32 (name of client) to waive the right to revoke, and make a
33 permanent and irrevocable consent to adoption. (Name of
34 client) understands that he/she will not be able to regain
35 custody of the child unless the petitioner(s)/prospective
36 adoptive parent(s) agree(s) to withdraw their petition for
37 adoption or the court denies the adoption petition. Within 10
38 working days of a request made after the department or the
39 delegated county adoption agency has received a copy of the
40 petition for the adoption and the names and addresses of the

persons to be interviewed, the department or the delegated county adoption agency shall interview, at the department or agency office, any birth parent requesting to be interviewed.

The following provisions apply to waivers which are signed within California. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

(I) A representative of a public adoption agency in that state.

(II) A judicial officer in that state where the birth parent is represented by independent legal counsel.

(III) An adoption service provider.

(3) Allow the consent to become a permanent consent on the 31st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 30 days, beginning on the date the consent was signed or as provided in paragraph (1) of subdivision (a), whichever occurs first.

SEC. 3. Section 9007 of the Family Code is amended to read:

9007. The prospective adoptive parent and the child proposed to be adopted shall appear before the court pursuant to Sections 8612 and, 8613, and 8613.5.

~~SECTION 1. Section 51 of the Civil Code is amended to read:~~

~~51. (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.~~

~~(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, and services in all business establishments of every kind whatsoever.~~

~~(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.~~

~~(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or~~

1 ~~modification of any sort whatsoever, beyond that construction,~~
2 ~~alteration, repair, or modification that is otherwise required by~~
3 ~~other provisions of law, to any new or existing establishment,~~
4 ~~facility, building, improvement, or any other structure, nor shall~~
5 ~~anything in this section be construed to augment, restrict, or alter~~
6 ~~in any way the authority of the State Architect to require~~
7 ~~construction, alteration, repair, or modifications that the State~~
8 ~~Architect otherwise possesses pursuant to other laws.~~

9 (e) ~~For purposes of this section:~~

10 (1) ~~“Disability” means any mental or physical disability as~~
11 ~~defined in Sections 12926 and 12926.1 of the Government Code.~~

12 (2) ~~“Medical condition” has the same meaning as defined in~~
13 ~~subdivision (h) of Section 12926 of the Government Code.~~

14 (3) ~~“Religion” includes all aspects of religious belief,~~
15 ~~observance, and practice.~~

16 (4) ~~“Sex” has the same meaning as defined in subdivision (p)~~
17 ~~of Section 12926 of the Government Code.~~

18 (5) ~~“Sex, race, color, religion, ancestry, national origin,~~
19 ~~disability, medical condition, marital status, or sexual orientation”~~
20 ~~includes a perception that the person has any particular~~
21 ~~characteristic or characteristics within the listed categories or that~~
22 ~~the person is associated with a person who has, or is perceived to~~
23 ~~have, any particular characteristic or characteristics within the~~
24 ~~listed categories.~~

25 (6) ~~“Sexual orientation” has the same meaning as defined in~~
26 ~~subdivision (q) of Section 12926 of the Government Code.~~

27 (f) ~~A violation of the right of any individual under the Americans~~
28 ~~with Disabilities Act of 1990 (Public Law 101-336) shall also~~
29 ~~constitute a violation of this section.~~